

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS,  
MARSHALL DIVISION

APPLICA CONSUMER PRODUCTS, INC., §

Plaintiff, §

v. §

DOSKOCIL MANUFACTURING  
COMPANY, INC., and  
LUCKY LITTER LLC

Defendants. §

CIVIL ACTION NO. 2:07cv73

JURY TRIAL REQUESTED

**COMPLAINT**

Plaintiff, Applica Consumer Products, Inc. (“Applica”), complains of Defendants, Daskocil Manufacturing Company, Inc. and Lucky Litter LLC (collectively, “Defendants”) as follows:

**PARTIES**

1. Applica is a Florida corporation having a principal place of business at 3633 Flamingo Road, Miramar, Florida 33027. Applica markets and distributes household products, including products under the brand names BLACK & DECKER®, LITTERMAID®, INFRAWAVE®, and BELSON®. Specifically, Applica markets and distributes patented cat litter box products under the LITTERMAID® mark. Applica has made and continues to make substantial investments in its LITTERMAID® product business to make its products the products of choice among America’s cat owners. Applica’s LITTERMAID® litter box products provide a healthier and safer environment for pets, while simultaneously making it easier for America’s pet owners to maintain litter box products.

2. Daskocil Manufacturing Company, Inc. (“Daskocil”) is a Texas corporation having its principal place of business located at 4209 Barnett Blvd., Arlington, Texas 76017.

3. Daskocil manufactures, sells and offers for sale various cat litter products under the brand name “Petmate.”

4. Daskocil owns the assets of Stylette Pet Products (“Stylette”), which manufactures cat litter products under the brand name “Littersweep.” Daskocil continues to sell and offer for sale Stylette’s cat litter products under the brand name “Littersweep.”

5. Lucky Litter LLC (“Lucky Litter”) is a Limited Liability Company formed in the state of Illinois and having its principal place of business at 2 N Riverside Plaza, Chicago, Illinois 60606.

6. Lucky Litter manufactures, sells and offers for sale various cat litter products under the brand name “ScoopFree.”

7. Lucky Litter has a license from the Clorox Pet Products Company (“Clorox”) to market the Clorox “Fresh Step” cat litter with its “ScoopFree” cat litter box products.

#### **PATENTS**

8. Applica owns United States Patent No. 6,082,302 (“the ‘302 Patent”) entitled “Self-Cleaning Litter Box,” which issued on July 4, 2000 (Exhibit A).

9. Waters Research Company (“WRC”), an Illinois corporation having a principal place of business at 213 West Main Street, West Dundee, Illinois 60118, owns United States Patent Re. 36,847 (“the ‘847 Patent”) entitled “Automated Self-Cleaning Litter Box for Cats,” which issued on September 5, 2000 (Exhibit B).

10. Angelo Carlisi, an individual, owns United States Patent No. 5,048,465 (“the ‘465 Patent”) entitled “Self-Cleaning Kitty Litter Box,” which issued on September 17, 1991 (Exhibit C).

11. Applica is the exclusive licensee of the ‘847 Patent.

12. Applica is the exclusive licensee, by way of WRC, of the ‘465 Patent.

13. Applica has properly marked its cat litter box products with the patent numbers.

### **STANDING**

14. Applica has standing in this lawsuit as owner of the ‘302 Patent and exclusive licensee of the ‘847 and ‘465 Patents.

### **JURISDICTION**

15. This is a claim for patent infringement arising under the patent laws of the United States, Title 35 of the United States Code. This Court has exclusive jurisdiction over the subject matter of the claim made under 28 U.S.C. § 1338(a).

### **VENUE**

16. Venue is proper in this district under 28 U.S.C. § 1400(b). Daskocil is a corporation and Lucky Litter is a Limited Liability Company that reside in this district under 28 U.S.C. § 1391(c), as both Daskocil and Lucky Litter are subject to personal jurisdiction in this district. In particular, Daskocil and Lucky Litter transact business in this district, including selling cat litter box products through retailers located in this district, *e.g.*, PetSmart® stores, as well as selling cat litter box products through the Internet to customers residing in this district.

**COUNT I - INFRINGEMENT OF THE '302 PATENT**

17. Applica realleges the allegations in paragraphs 1-16 as though fully set forth herein.

18. Daskocil has infringed at least one claim of the '302 Patent by, among other activities, the manufacture, operation, promotion, use, importation, sale and offer for sale of cat litter box products, including but not limited to, for example, the "Petmate Purrforma," "Petmate Purrforma Plus," and "LitterSweep Ultra" cat litter box products.

19. Daskocil has further committed acts of infringement of the '302 Patent by contributing to and inducing others to infringe the '302 Patent. Daskocil has purposefully caused, urged, or encouraged others to infringe.

20. Daskocil's infringement has injured Applica, and, as a consequence, Applica is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonably royalty.

21. Daskocil has been made aware of the '302 Patent and has, nonetheless, copied and/or infringed claims of that patent with knowledge of the patent's scope and application to the activities carried out by Daskocil. As a consequence, Daskocil's infringement has been willful and deliberate and has injured and will continue to injure Applica unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, promotion, use, importation, sale and offer for sale of products and performing of methods within the scope of the '302 Patent.

22. Lucky Litter has infringed at least one claim of the '302 Patent by, among other activities, the manufacture, operation, promotion, use, importation, sale and offer for sale of cat

litter box products, including but not limited to, for example, the “ScoopFree” cat litter box product.

23. Lucky Litter has further committed acts of infringement of the ‘302 Patent by contributing to and inducing others to infringe the ‘302 Patent. Lucky Litter has purposefully caused, urged, or encouraged others to infringe.

24. Lucky Litter’s infringement has injured Applica, and, as a consequence, Applica is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonably royalty.

25. Lucky Litter has been made aware of the ‘302 Patent and has, nonetheless, copied and infringed claims of that patent with knowledge of the patent’s scope and application to the activities carried out by Lucky Litter. As a consequence, Lucky Litter’s infringement has been willful and deliberate and has injured and will continue to injure Applica unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, promotion, use, importation, sale and offer for sale of products and performing of methods within the scope of the ‘302 Patent.

## **COUNT II - INFRINGEMENT OF THE ‘847 PATENT**

26. Applica realleges the allegations in paragraphs 1-25 as though fully set forth herein.

27. Doscocil has infringed at least one claim of the ‘847 Patent by, among other activities, the manufacture, operation, promotion, use, importation, sale and offer for sale of cat litter box products, including but not limited to, for example, the “Petmate Purrforma” and “Petmate Purrforma Plus” cat litter box products.

28. Daskocil has further committed acts of infringement of the '847 Patent by contributing to and inducing others to infringe the '847 Patent. Daskocil has purposefully caused, urged, or encouraged others to infringe.

29. Daskocil's infringement has injured Applica, and, as a consequence, Applica is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonably royalty.

30. Daskocil has been made aware of the '847 Patent and has, nonetheless, copied and/or infringed claims of that patent with knowledge of the patent's scope and application to the activities carried out by Daskocil. As a consequence, Daskocil's infringement has been willful and deliberate and has injured and will continue to injure Applica unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, promotion, use, importation, sale and offer for sale of products within the scope of the '847 Patent.

31. Lucky Litter has infringed at least one claim of the '847 Patent by, among other activities, the manufacture, operation, promotion, use, importation, sale and offer for sale of cat litter box products, including but not limited to, for example, the "ScoopFree" cat litter box product.

32. Lucky Litter has further committed acts of infringement of the '847 Patent by contributing to and inducing others to infringe the '847 Patent. Lucky Litter has purposefully caused, urged, or encouraged others to infringe.

33. Lucky Litter's infringement has injured Applica, and, as a consequence, Applica is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonably royalty.

34. Lucky Litter has been made aware of the '847 Patent and has, nonetheless, copied and infringed claims of that patent with knowledge of the patent's scope and application to the activities carried out by Lucky Litter. As a consequence, Lucky Litter's infringement has been willful and deliberate and has injured and will continue to injure Applica unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, promotion, use, importation, sale and offer for sale of products within the scope of the '847 Patent.

### **COUNT III - INFRINGEMENT OF THE '465 PATENT**

35. Applica realleges the allegations in paragraphs 1-34 as though fully set forth herein.

36. Daskocil has infringed at least one claim of the '465 Patent by, among other activities the manufacture, operation, promotion, use, importation, sale and offer for sale of cat litter box products, including but not limited to, for example, the "LitterSweep Ultra" cat litter box product.

37. Daskocil has further committed acts of infringement of the '465 Patent by contributing to and inducing others to infringe the '465 Patent. Daskocil has purposefully caused, urged, or encouraged others to infringe.

38. Daskocil's infringement has injured Applica, and, as a consequence, Applica is entitled to recover damages adequate to compensate it for such infringement, but in no event less than a reasonably royalty.

39. Daskocil has been made aware of the '465 Patent and has, nonetheless, copied and/or infringed claims of that patent with knowledge of the patent's scope and application to the activities carried out by Daskocil. As a consequence, Daskocil's infringement has been willful

and deliberate and has injured and will continue to injure Applica unless and until this Court enters an injunction prohibiting further infringement and, specifically, enjoining further manufacture, promotion, use, importation, sale and offer for sale of products within the scope of the '465 Patent.

40. WHEREFORE, Applica, asks this Court to enter judgment against Defendants, Daskocil and Lucky Litter, and against Defendants' subsidiaries, affiliates, agents, servants, employees, and all persons in active concert or participation with Defendants, granting the following relief:

A. An award of damages adequate to compensate Applica for the infringement that has occurred, together with prejudgment interest from the date infringement of the '302, '847, and '465 Patents began;

B. Increased damages as permitted under 35 U.S.C. § 284;

C. A finding that this case is exceptional and an award to Applica its attorneys' fees and costs as provided by 35 U.S.C. § 285;

D. A permanent injunction prohibiting further infringement of the '302, '847, and '465 Patents; and

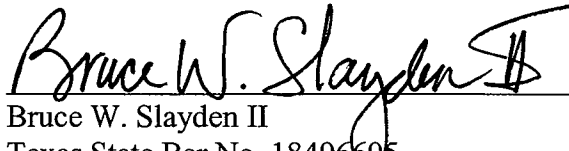
E. Such other and further relief as this Court or a jury may deem proper and just.

**JURY DEMAND**

Applica demands a trial by jury on all issues presented in this Complaint.



Respectfully submitted,

A handwritten signature in black ink, reading "Bruce W. Slayden II". The signature is written in a cursive style with a large, stylized "S" at the end.

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